

1999 DRAFTING REQUEST

Bill

Received: 12/23/98

Received By: **dykmapj**

Wanted: **As time permits**

Identical to LRB:

For: **Joanne Huelsman (608) 266-2635**

By/Representing: **PJD**

This file may be shown to any legislator: **NO**

Drafter: **dykmapj**

May Contact:

Alt. Drafters:

Subject: **Fin. Inst. - UCC**

Extra Copies: **PJD**

Pre Topic:

No specific pre topic given

Topic:

Article VI of UCC -Bulk Transfers

Instructions:

1997 AB 457

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	dykmapj 02/18/99	wjackson 02/19/99		_____			
/1			jfrantze 02/23/99	_____	lrb_docadmin 02/23/99	lrb_docadmin 02/24/99	

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<END>

Not Needed

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1?	dykmapj	1 2/18 WLj	2/19	2/19 2/19			

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1997 ASSEMBLY BILL 457



July 15, 1997 - Introduced by Representatives CULLEN and GREEN, cosponsored by Senators GEORGE and HUELSMAN. Referred to Committee on Financial Institutions.

REGEN

1 AN ACT to repeal 401.105 (2) (c), chapter 406 (title), 406.101, 406.102 (3) and
 2 409.111; to renumber and amend 406.102 (title), (1), (2), (3m) and (4),
 3 406.103, 406.104, 406.105, 406.107, 406.108, 406.109, 406.110 and 406.111; to
 4 amend 402.403 (4), 452.09 (3) (a), 480.08 (2m) (intro.) and 480.14 (4); and to
 5 create subchapter IV (title) of chapter 125 [precedes 125.80] of the statutes;
 6 relating to: bulk transfers of inventory.

Analysis by the Legislative Reference Bureau

Under current law, the bulk transfer provisions of the uniform commercial code (UCC) generally require a business enterprise to give creditors notice before any transfer of a major part of the value of the business's inventory or a substantial part of the equipment of the business, if the equipment is included with a bulk transfer of inventory. These provisions apply to all business enterprises whose principal business is the sale of merchandise from stock, including retailers of alcohol beverages. This bill removes the bulk transfer provisions from the UCC and makes the bulk transfer provisions applicable *only* to retailers of alcohol beverages.

The National Conference of Commissioners on Uniform State Laws and the American Law Institute recommended repeal of the UCC bulk transfers law in 1989

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and promulgated the official text. The American Bar Association approved the text in 1990.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. Subchapter IV (title)[✓] of chapter 125 [precedes 125.80][✓] of the
2 statutes is created to read:

CHAPTER 125

SUBCHAPTER IV

BULK TRANSFERS BY RETAILERS

6 SECTION 2. 401.105 (2) (c)[✓] of the statutes is repealed.

7 SECTION 3. 402.403 (4)[✓] of the statutes is amended to read:

8 402.403 (4) The rights of other purchasers of goods and of lien creditors are
9 governed by chs. 406, 407 and 409.

10 SECTION 4. Chapter 406 (title)[✓] of the statutes is repealed.

11 SECTION 5. 406.101[✓] of the statutes is repealed.

12 SECTION 6. 406.102 (title)[✓], (1)[✓], (2)[✓], (3m)[✓] and (4)[✓] of the statutes are renumbered
13 125.80 (title)[✓], (1)[✓], (2)[✓], (3m)[✓] and (4)[✓] and amended to read:

14 125.80 (title) ~~“Bulk transfers”; transfers of equipment; enterprises~~
15 ~~subject to this chapter; bulk transfers subject to Applicability of this~~
16 ~~chapter subchapter.~~ (1) A “bulk transfer” is any transfer in bulk and not in the
17 ordinary course of the transferor's retailer's business of a major part in value of the
18 retailer's inventory (, as described under s. 409.109) of an enterprise subject to this
19 chapter (4)[✓].

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1 (2) A transfer of a substantial part of the equipment ~~(, as described under s.~~
2 409.109) ~~of such an enterprise~~ (2) ¹ of a retailer is a bulk transfer if it is made in
3 connection with a bulk transfer of inventory, but not otherwise.

4 (3m) The sale, transfer or assignment, in bulk, of any stock of merchandise or
5 of fixtures, pertaining to the merchandise, including any sale, transfer or
6 assignment made in consideration of any existing indebtedness, otherwise than in
7 the ordinary course of trade and in the usual conduct of business by retailers of
8 alcohol beverages, is subject to this chapter ~~subchapter~~ ¹.

9 (4) Except as limited by s. 406.103 ~~125.81~~ ¹, all bulk transfers of goods located
10 within this state are subject to this chapter ~~subchapter~~ ¹.

11 SECTION 7. 406.102 (3) ¹ of the statutes is repealed.

12 SECTION 8. 406.103 ¹ of the statutes is renumbered 125.81 ¹ and amended to read:

13 125.81 (title) **Transfers excepted from this chapter ~~subchapter~~ ¹.** (1) The
14 following transfers are not subject to this chapter ~~subchapter~~ ¹:

15 (a) Those made to give security for the performance of an obligation; ₂

16 (b) General assignments for the benefit of all the creditors of the transferor
17 retailer, and subsequent transfers by the assignee thereunder; ₂

18 (c) ~~Transfers~~ Except as provided in s. 125.80 (3m) ¹, transfers in settlement or
19 realization of a lien or other security interest; ₂

20 (d) Sales by executors, administrators, receivers, trustees in bankruptcy, or any
21 public officer under judicial process; ₂

22 (e) Sales made in the course of judicial or administrative proceedings for the
23 dissolution or reorganization of a ~~corporation~~ retailer and of which notice is sent to
24 the creditors of the ~~corporation~~ retailer pursuant to order of the court or
25 administrative agency; ₂

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SECTION 8

1 (f) Transfers to a person maintaining a known place of business in this state
2 who becomes bound to pay the debts of the ~~transferor~~ retailer in full and gives public
3 notice of that fact, and who is solvent after becoming so bound;

4 (g) A transfer to a new business enterprise organized to take over and continue
5 the business, if public notice of the transaction is given and the new enterprise
6 assumes the debts of the ~~transferor~~ retailer and the ~~transferor~~ retailer receives
7 nothing from the transaction except an interest in the new enterprise junior to the
8 claims of creditors;

9 (h) Transfers of property ~~which~~ that is exempt from execution.

10 (2) Public notice under sub. (1) (f) or (g) may be given by publication of a class
11 2 notice, under ch. 985, where the ~~transferor~~ retailer had its principal place of
12 business in this state. The notice shall include the names and addresses of the
13 ~~transferor~~ retailer and transferee and the effective date of the transfer.

14 SECTION 9. 406.104¹ of the statutes is renumbered 125.82¹ and amended to read:

15 **125.82 Schedule of property, list of creditors.** (1) Except as provided with
16 respect to auction sales (~~s. 406.108~~) under s. 125.85, a bulk transfer subject to this
17 chapter subchapter is ineffective against any creditor of the ~~transferor~~ retailer
18 unless all of the following conditions are met:

19 (a) The transferee requires the ~~transferor~~ retailer to furnish a list of the
20 ~~transferor's~~ retailer's existing creditors prepared as stated in this section; ~~and~~.

21 (b) The parties prepare a schedule of the property transferred sufficient to
22 identify it; ~~and~~.

23 (c) The transferee preserves the list and schedule for 6 months next following
24 the transfer and permits inspection of either or both and copying therefrom at all

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reasonable hours by any creditor of the ~~transferor~~ retailer, or files the list and schedule with the department of financial institutions.

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(2) The list of creditors must be signed and sworn to or affirmed by the ~~transferor~~ retailer or the ~~transferor's~~ retailer's agent. It must contain the names and business addresses of all creditors of the ~~transferor~~ retailer, with the amounts when known, and also the names of all persons who are known to the ~~transferor~~ retailer to assert claims against the ~~transferor~~ retailer even though such claims are disputed.

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If the ~~transferor~~ retailer is the obligor of an outstanding issue of bonds, debentures or the like as to which there is an indenture trustee, the list of creditors need include only the name and address of the indenture trustee and the aggregate outstanding principal amount of the issue. The list of creditors shall include the name and address of the clerk of the municipality in which the property was last assessed.

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(3) Responsibility for the completeness and accuracy of the list of creditors rests on the ~~transferor~~ retailer, and the transfer is not rendered ineffective by errors or omissions therein unless the transferee is shown to have had knowledge.

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SECTION 10. 406.105[✓] of the statutes is renumbered 123.83[✓] and amended to read:

123.83 Notice to creditors. In addition to the requirements of s. 406.104 125.82[✓], any bulk transfer subject to this ~~chapter~~ subchapter except one made by auction sale (~~s. 406.108~~) under s. 125.85[✓] is ineffective against any creditor of the ~~transferor~~ retailer unless at least 10 days before the transferee takes possession of the goods or pays the major part of the purchase price, whichever happens first, the transferee gives notice of the transfer in the manner and to the persons specified in s. 406.107 125.84[✓].

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SECTION 11

1 SECTION 11. 406.107[✓] of the statutes is renumbered 125.84,[✓] and 125.84 (1),[✓] (2)
2 (intro.),[✓] (a),[✓] (b) and (c)[✓] and (3),[✓] as renumbered, are amended to read:

3 125.84 (1) The notice to creditors (~~s. 406.105~~) under s. 125.83 shall state all
4 of the following:

5 (a) That a bulk transfer is about to be made; ~~and,~~

6 (b) The names and business addresses of the ~~transferor~~ retailer and transferee,
7 and all other business names and addresses used by the ~~transferor~~ retailer within
8 3 years last past so far as known to the transferee; ~~and,~~

9 (c) Whether or not all the debts of the ~~transferor~~ retailer are to be paid in full
10 as they fall due as a result of the transaction, and if so, the address to which creditors
11 should send their bills.

12 (2) (intro.) If the debts of the ~~transferor~~ retailer are not to be paid in full as they
13 fall due or if the transferee is in doubt on that point then the notice shall also state
14 further all of the following:

15 (a) The location and general description of the property to be transferred and
16 the estimated total of the ~~transferor's~~ retailer's debts; ~~;~~

17 (b) The address where the schedule of property and list of creditors (~~s. 406.104~~)
18 under s. 125.82 may be inspected; ~~;~~

19 (c) Whether the transfer is to pay existing debts and if so the amount of such
20 debts and to whom owing; ~~;~~

21 (3) The notice in any case shall be delivered personally or sent by registered
22 mail or certified mail to all the persons shown on the list of creditors furnished by the
23 ~~transferor~~ (~~s. 406.104~~) retailer under s. 125.82[✓] and to all other persons who are
24 known to the transferee to hold or assert claims against the ~~transferor~~ retailer.

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1 **SECTION 12.** 406.108[✓] of the statutes is renumbered 125.85[✓] and amended to
2 read:

3 **125.85 Auction sales; “auctioneer”.** (1) A bulk transfer is subject to this
4 ~~chapter~~ subchapter even though it is by sale at auction, but only in the manner and
5 with the results stated in this section.

6 (2) The ~~transferor~~ retailer shall furnish a list of the ~~transferor’s~~ retailer’s
7 creditors and assist in the preparation of a schedule of the property to be sold, both
8 prepared as stated in s. 406.104 125.82.

9 (3) The person or persons other than the ~~transferor~~ retailer who direct, control
10 or are responsible for the auction are collectively called the “auctioneer”. The
11 auctioneer shall do all of the following:

12 (a) Receive and retain the list of creditors and prepare and retain the schedule
13 of property for the period stated in s. 406.104; and 125.82.

14 (b) Give notice of the auction personally or by registered or certified mail at
15 least 10 days before it occurs to all persons shown on the list of creditors and to all
16 other persons who are known to the auctioneer to hold or assert claims against the
17 ~~transferor~~ retailer.

18 (4) Failure of the auctioneer to perform any of these duties does not affect the
19 validity of the sale or the title of the purchasers, but if the auctioneer knows that the
20 auction constitutes a bulk transfer such failure renders the auctioneer liable to the
21 creditors of the ~~transferor~~ retailer as a class for the sums owing to them from the
22 ~~transferor~~ retailer up to but not exceeding the net proceeds of the auction. If the
23 auctioneer consists of several persons their liability is joint and several.

24 **SECTION 13.** 406.109[✓] of the statutes is renumbered 125.86[✓] and amended to
25 read:

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SECTION 13

1 **125.86 What creditors protected.** The creditors of the ~~transferor~~ retailer
 2 mentioned in this ~~chapter~~ subchapter are those holding claims based on transactions
 3 or events occurring before the bulk transfer, but creditors who become such after
 4 notice to creditors is given (~~ss. 406.105 and 406.107~~) under ss. 125.83 and 125.84 are
 5 not entitled to notice.

6 **SECTION 14.** 406.110[↓] of the statutes is renumbered 125.87[√], and 125.87 (intro.),
 7 as renumbered, is amended to read:

8 **125.87 Subsequent transfers.** (intro.) When the title of a transferee to
 9 property is subject to a defect by reason of the transferee's noncompliance with the
 10 requirements of this ~~chapter~~ subchapter, then:

11 **SECTION 15.** 406.111[√] of the statutes is renumbered 125.88[√] and amended to read:

12 **125.88 Limitation of actions and levies.** No action under this ~~chapter~~
 13 subchapter shall be brought nor levy made more than 6 months after the date on
 14 which the transferee took possession of the goods unless the transfer has been
 15 concealed. If the transfer has been concealed, actions may be brought or levies made
 16 within 6 months after its discovery.

17 **SECTION 16.** 409.111[↓] of the statutes is repealed.

18 **SECTION 17.** 452.09 (3) (a)[↓] of the statutes is amended to read:

19 452.09 (3) (a) In determining competency, the department shall require proof
 20 that the applicant for a broker's or salesperson's license has a fair knowledge of the
 21 English language, a fair understanding of the general purposes and general legal
 22 effect of deeds, mortgages, land contracts of sale, leases, bills of sale, chattel
 23 mortgages, [√] and conditional sales contracts, ~~the provisions of the bulk sales law and~~
 24 a general and fair understanding of the obligations between principal and agent, as
 25 well as of this chapter. An applicant receiving a failing grade, as established by rules

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1 of the department, on any examination given under this section shall be denied a
2 license, but any applicant may review his or her examination results in a manner
3 established by rules of the department.

4 SECTION 18. 480.08 (2m) (intro.) of the statutes is amended to read:

5 480.08 (2m) EXAMINATION NOT REQUIRED. (intro.) Notwithstanding sub. (2) (e),
6 the department shall register as an auctioneer under sub. (2) an individual who, not
7 later than December 1, 1997, satisfies the requirements under sub. (2) (intro.) and
8 (a) to (d); submits to the department a statement, signed by the individual, verifying
9 that he or she has knowledge of the requirements for auctioneers under ss. ~~402.328~~
10 ~~402.328~~ and 402.328 and 406.108, subch. III of ch. 77, subch. VIII of ch. 218, this
11 chapter, and all other state laws that include requirements for auctioneers; and
12 submits evidence satisfactory to the department that he or she has done any of the
13 following:

14 SECTION 19. 480.14 (4) of the statutes is amended to read:

15 480.14 (4) An auctioneer shall comply with all requirements for auctioneers
16 under ss. s. 402.328 and 406.108 and the rules promulgated under ss. s. 402.328 and
17 406.108.

18 (END)

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**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and **sign** on the appropriate line(s) below.

Date: 2/23/99

To: Senator Huelsman

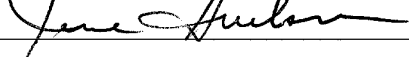
Relating to LRB drafting number: LRB-1445

Topic

Article VI of UCC -Bulk Transfers

Subject(s)

Fin. Inst. - UCC

1. **JACKET** the draft for introduction  _____
in the **Senate** or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____.
A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.
If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Attorney Peter J. Dykman, Deputy Chief
Telephone: (608) 266-7098